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9 UNITED STATES DISTRICT COURT  
10 DISTRICT OF NEVADA  
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12 Joe Hand Promotions, Inc.,

13 Plaintiff

14 v.

15 Eden J. Steak, et al.,

16 Defendants  
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Case No.: 2:12-cv-1930-JAD-PAL

**Order Denying Without Prejudice  
Defendants' Motion for Summary  
Judgment [Doc. 16]**

18 This dispute involves commercial distribution rights to the August 27, 2011, television  
19 presentation of "Ultimate Fighting Championship 114: 'Rio:' Anderson Silva v. Yushin  
20 Okami" (the Event") Doc. 1 at 4. Plaintiff Joe Hand Promotions, which distributes and  
21 licenses sporting events, claims it held distribution rights to the Event, and entered into  
22 sublicensing agreements with "various commercial entities" in Nevada which permitted those  
23 entities to broadcast the Event in their establishments. *Id.* at 3. Joe Hand claims that  
24 Defendants Eden J. Steak LLC, Donghwan Park, and Albert S. Lee, who own and operate a  
25 Las Vegas Steak house, broadcast the Event without obtaining Joe Hand's permission, even  
26 though they knew of Joe Hand's exclusive distribution rights. *See id.* Joe Hand claims these  
27 actions violated two federal statutes, 47 U.S.C. §§ 555 and 605, and made Defendants liable  
28 for conversion under Nevada state law. *Id.* at 4-7.

1 Defendants then moved for “summary judgment or partial summary judgment,”  
2 claiming, *inter alia*, that they are entitled to judgment as a matter of law because Joe Hand’s  
3 Complaint did not properly plead a cause of action under either federal statute, and that Park  
4 and Lee cannot be held liable under a conversion theory because when an LLC entity is  
5 involved its individual members cannot be held liable. *See* Doc. 16 at 5-6. Defendants’  
6 motion consists solely of a memorandum of law addressing various points, which begins with  
7 what it claims is a “brief statement of the facts.” *Id.* at 3. These “facts” are bereft of any  
8 citation of points in the record, or indicia that any fact is either disputed or undisputed. *See*  
9 Doc. 16 at 3.

10 Plaintiffs seize on this issue in their response to the motion, arguing that because  
11 Defendants failed to offer a separate statement of undisputed facts, they do not satisfy the  
12 summary judgment presentation standards set out in this District’s Local Rule 56-1 and their  
13 motion can be denied as procedurally deficient. Doc. 18 at 4. No reply to the response was  
14 filed. After reviewing the motion the Court agrees that it is procedurally defective, but  
15 denies the motion without prejudice to give Defendants the opportunity to either re-style their  
16 motion under a different legal theory or present their arguments in a manner compliant with  
17 the summary judgment presentation rules.

### 18 Discussion

19 “A party may move for summary judgment, identifying each claim or defense—or the  
20 part of each claim or defense—on which summary judgment is sought.”<sup>1</sup> The burdens on  
21 summary judgment are key. A party seeking summary judgment bears the initial burden of  
22 informing the Court of those portions of the pleadings and discovery that demonstrate the  
23 absence of a genuine issue of material fact.<sup>2</sup>

24 Parties moving for summary judgment must satisfy Rule 56 of the Federal Rules of  
25 Civil Procedure. Subsection (c)(1) of that rule states, “A party asserting that a fact cannot be  
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27 <sup>1</sup> Fed. R. Civ. P. 56(a).

28 <sup>2</sup> *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

1 or is genuinely disputed must support the assertion by (A) citing to particular parts of  
2 materials in the record, including depositions, documents, electronically stored information,  
3 affidavits or declarations, stipulations (including those made for purposes of motion only),  
4 admissions, interrogatory answers, or other materials; or (B) showing that the materials cited  
5 do not establish the absence or presence of a genuine dispute, or that an adverse party cannot  
6 produce admissible evidence to support the fact.”<sup>3</sup> When a defendant moves for summary  
7 judgment on a plaintiff’s claims “on the ground that the nonmoving party has no evidence,”  
8 he or she “must affirmatively show the absence of evidence in the record.”<sup>4</sup> “This may  
9 require the moving party to depose the nonmoving party’s witnesses or to establish the  
10 inadequacy of documentary evidence.”<sup>5</sup> “If there is literally no evidence in the record, the  
11 moving party may demonstrate this by reviewing for the court the admissions,  
12 interrogatories, and other exchanges between the parties that are in the record. Either way,  
13 however, the moving party must affirmatively demonstrate that there is no evidence in the  
14 record to support a judgment for the nonmoving party.”<sup>6</sup> “If the moving party has not fully  
15 discharged this initial burden of production, its motion for summary judgment must be  
16 denied, and the Court need not consider whether the moving party has met its ultimate  
17 burden of persuasion.”<sup>7</sup> Thus, “[i]f a moving party fails to carry its initial burden of  
18 production, the nonmoving party has no obligation to produce anything, even if the  
19 nonmoving party would have the ultimate burden of persuasion at trial.”<sup>8</sup>

20 The Ninth Circuit cautions that parties who fail to provide pinpoint citations to  
21 evidence supporting assertions made in a statement of disputed or undisputed facts risk  
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23 <sup>3</sup> Fed. R. Civ. P. 56(c)(1).

24 <sup>4</sup> *Celotex*, 477 U.S. at 332 (internal citations omitted).

25 <sup>5</sup> *Id.*

26 <sup>6</sup> *Id.*

27 <sup>7</sup> *Id.*

28 <sup>8</sup> *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1102-03 (9th Cir. 2000).

1 exclusion of that evidence, as the Court is not required to “paw over files without the  
 2 assistance from the parties” in order to evaluate their contentions.<sup>9</sup> Accordingly, to properly  
 3 present a motion for, or opposition to, summary judgment, litigants must comply with this  
 4 District’s Local Rule 56-1, which specifies that any such motion “shall include a concise  
 5 statement setting forth each fact material to the disposition of the motion, which the party  
 6 claims is or is not genuinely in issue, citing the particular portions of any pleading, affidavit,  
 7 deposition, interrogatory, answer, admission, or other evidence upon which the party  
 8 relies.”<sup>10</sup> Courts in this district routinely decline to reach the merits of arguments made in  
 9 connection with a “summary judgment” filing which contains no statement of undisputed  
 10 facts at all.<sup>11</sup> Since Defendants’ filing refers to “facts” without clarifying whether they are  
 11 disputed or undisputed, and does not contain any pinpoint citations to the record, Defendants  
 12 have failed to comply with Local Rule 56-1. *See* Doc. 16 at 3. This alone justifies denial of  
 13 the motion without reaching its merits.

14 Some Nevada district courts have overlooked a party’s failure to support many of its  
 15 factual statements with citations to the record where the failure was not “egregious”<sup>12</sup> or  
 16 where the summary judgment filing otherwise complied with the “spirit” of the rule.<sup>13</sup>  
 17 Defendants’ filing contains a “brief statement of the facts” without any citations to the  
 18 record, proceeds to refer broadly to the “counts” in Joe Hand’s complaint, and argues that Joe  
 19 Hand has not adequately pled a claim for relief under any of his three causes of action. *See*

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21 <sup>9</sup> *Orr v. Bank of America*, 285 F.3d 764, 774-75 (9th Cir. 2002).

22 <sup>10</sup> D. Nev. L.R. 56-1. As a general matter, the trial court may not interpret local rules to *grant* a summary  
 23 judgment motion as unopposed, but must consider whether the merits of the undisputed facts warrant entry of  
 24 judgment against the non-moving party. *See Heinemann v. Setterberg*, 731 F.3d 914, 917 (9th Cir. 2013).  
 However, *Heinemann* does not speak to the issue of whether the Court may *deny* summary judgment when a  
 movant files a motion which does not comply with such rules.

25 <sup>11</sup> *See, e.g., Engel v. Siroky*, 2014 WL 585769, at \*2 (D. Nev. Feb. 14, 2014); *Montgomery v. Las Vegas*  
 26 *Metropolitan Police Department*, 2013 WL 1703618, at \*7 (D. Nev. Apr. 19, 2013); *Jones v. Las Vegas Valley*  
*Water District*, 2012 WL 1900943, at \*1 (D. Nev. May 24, 2012); *Spitzmesser v. Tate Snyder Kimsey Architects,*  
*Ltd.*, 2011 WL 2552606, at \*3-\*4 (D. Nev. June 27, 2011).

27 <sup>12</sup> *Henry v. Rizzolo*, 2011 WL 3240443, at \*5 (D. Nev. July 28, 2011).

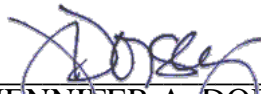
28 <sup>13</sup> *Riggs Marketing Inc. v. Mitchell*, 993 F. Supp. 1301, 1304 (D. Nev. 1997).

1 Doc. 16. Defendants' exclusive references to the "pleadings" may evince their unstated  
2 intent to bring this motion for "summary judgment" as a motion to dismiss under Fed. R. Civ.  
3 Proc. 12(b)(6). But Defendants, after receiving Joe Hand's response to their motion for  
4 "summary judgment," never filed a reply to clarify their intentions, and the Court will not  
5 analyze the merits of a legal argument Defendants have elected not to make. Instead, in light  
6 of the substantive ambiguity in Defendants' filing and the "spirit" of Local Rule 56-1, the  
7 Court denies the motion for summary judgment without prejudice, to allow Defendants the  
8 opportunity to either re-submit a properly supported motion for summary judgment, or to  
9 properly re-cast it as a motion to dismiss under Fed. R. Civ. Proc. 12(b)(6). As the  
10 dispositive-motion deadline has expired, Defendants' new motion must be filed within 14  
11 days of this order.

### 12 Conclusion

13 It is **HEREBY ORDERED** that Defendants' Motion for Summary Judgment is  
14 **DENIED WITHOUT PREJUDICE**. As the dispositive-motion deadline has expired,  
15 Defendants' new motion must be filed within 14 days of this order.

16 DATED March 31, 2014.

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19 JENNIFER A. DORSEY  
20 UNITED STATES DISTRICT JUDGE  
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